



Arizona State Retirement System

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Working After Retirement

A Guide for Members and Employers

Questions?

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Disclaimer: The ASRS is governed by complex state and federal laws. This Guide is intended to provide general information and does not replace statutory and rule requirements. Arizona Revised Statutes, the Arizona Administrative Code along with the federal code for both the IRS and Social Security Title 218, shall be final authority. For additional information, please visit the ASRS website at www.azasrs.gov or contact the ASRS.

In general, if an ASRS retiree works or agrees to work 20 or more hours per week for 20 or more weeks in a fiscal year (referred to below as 20/20) for an ASRS employer their pension will be suspended and active membership will resume. Under very specific conditions an ASRS retiree can qualify to remain retired while working for an ASRS employer. It is the member's responsibility to ensure compliance.

ASRS participation is limited to positions covered by the Social Security 218 agreement – ask your employer if your position qualifies.

A *Retiree Return to Work for an ASRS Employer* form must be completed upon beginning any post-retirement employment and again if work hours permanently change. This form can be found in the Working After Retirement section of the ASRS website.

The following provides details on returning to work for an ASRS employer while retired under specific circumstances. Some common scenarios are offered for illustrative purposes. The Arizona Revised Statute that applies is also noted.

Returning to work with reduced hours (A.R.S. § 38-766)

Arizona law allows all retirees who have terminated employment to return to work less than 20/20 after retirement without a suspension of pension. However, a retiree's pension will be suspended if any of the following conditions are met:

- a) Member did not reduce hours below 20/20.
- b) Member worked 20/20 prior to retirement then, after retirement but in the same fiscal year, agrees to or does work even one more 20 hour week; or
- c) Member worked some 20 or more hour weeks prior to retirement and then, after retirement but in the same fiscal year, agrees to or does work additional 20 hour weeks so that the total weeks of at least 20 hours worked before and after retirement equals or exceeds 20; or

- d) Member who meets or exceeds 20/20 in any fiscal year after retirement without having attained normal retirement AND been terminated from employment for at least 12 months.

Scenario 1: A member retires with ASRS on January 1, having already worked 26 full-time weeks during the fiscal year. The member returns to work in April in a temporary position and works 20 or more hours that first week. The member's ASRS pension will be suspended because the member has already met the 20/20 criteria for membership in that fiscal year.

Scenario 2: A member retires with ASRS on September 7, already having worked 10 full-time weeks during the fiscal year. The member returns to work in January and works 9 weeks of 20 or more hours per week and 17 weeks of less than 20 hours in the remainder of the fiscal year. The member's pension will not be suspended because the member only worked 19 weeks of at least 20 hours in the fiscal year.

Returning to work after 12 months (A.R.S. § 38-766.01)

The 12-month rule allows members who meet *all* of the following conditions to return to work full time without a suspension of pension:

- a) Member must have either retired at normal retirement age or at least reached normal retirement age prior to returning to work.
- b) A termination of employment is required.
- c) Member must wait 12 months from date of termination to return to work (not from retirement date).
- d) During the 12-month wait the member cannot meet 20/20 criteria for active membership:
 - 1. If the member has already worked one or more weeks of 20 or more hours in the fiscal year before retirement, those weeks will count toward the 20/20 criteria.
 - 2. Member cannot work any 20 or more hour weeks in the same fiscal year after termination if already worked 20/20 before termination of employment.
 - 3. Member cannot take an ongoing 20 or more hour per week job that starts before the 12 months have expired.
- e) Member must sign a statement acknowledging all these conditions, including no further ASRS contributions, no LTD eligibility and no additional service credit. The Return to Work for an ASRS Employer form may be used for this purpose. The statement or form must be signed and filed with the employer within 30 days of returning to work.
- f) Members retired from being a certified teacher must return without tenure.
- g) The decision to return to work without a suspension is irrevocable for the remainder of the employment period.

Scenario 1: A member at age 50 with 9 years of service elects to terminate employment and take early retirement. After 12 months he investigates whether he can return to work full-time without suspension of his pension. He is not eligible because he has not yet reached normal retirement age.

Scenario 2: A member at age 61 with 18 years of service elects to terminate employment and retire. After 12 months she investigates whether she can return to work full-time without suspension of pension. She is eligible because she is now at normal retirement. Her age plus service has reached 80 points, and she has also reached age 62 with at least 10 years of service. She has been terminated 12 months and, as long as she meets the other requirements, she may return to work for an ASRS employer in a 20/20 position without suspending her pension and resuming active contributions.

Returning to work and participating in another state retirement plan (A.R.S. § 38-727)

If a member terminates employment and retires the member may return to work in a 20/20 position without a suspension of pension benefits if that position satisfies all of the following:

- a) Results in a true change in position, job duties and job title from the position occupied by the member before ASRS retirement
- b) Does not require participation in the ASRS
- c) Either:

1. Requires participation in another state retirement system and the member makes those contributions unless coverage is waived by an individual eligible for the Elected Officials Retirement Plan, or
2. Permits a member to participate in another state retirement system and the member makes that election.

Scenario 1: *A member terminates employment, retires with the ASRS, and goes to work within 12 months for a different employer in a position that participates in the Corrections Officer Retirement Plan. The member's ASRS pension will not be suspended.*

Scenario 2: *A member, without terminating employment, attempts to retire with the ASRS by transferring into a new position with the same employer. The new position meets the 20/20 criteria for membership but requires participation in the Public Safety Personnel Retirement System. The member ceases making contributions to the ASRS but cannot retire from the ASRS since the member has not terminated employment.*

Returning to work as a leased employee (A.R.S. § 38-711) or an independent contractor

Arizona law allows a member to terminate employment, retire from the ASRS and return immediately as a leased employee or an independent contractor without a suspension of pension. However, these individuals may be considered to be "employees" by the IRS, the Social Security Administration, or another governmental authority, and could face a suspension of pension if that determination were made.

Scenario 1: *A member terminates employment, retires with the ASRS, and immediately returns to the same position but works for a third party leasing company and not directly for the ASRS employer. This member's pension may be suspended if it is determined the member is working as an "employee" for IRS or Social Security purposes.*

Scenario 2: *A member terminates employment, retires with the ASRS and then sets up a limited liability corporation to be his employer. After six months the LLC leases the retiree to an ASRS employer as an "independent consultant." This member's pension could be suspended because the retiree might not satisfy the IRS definition of an independent contractor. A member considering independent contracting should consult with his or her employer and the IRS before taking this step.*

Retiring without terminating employment (A.R.S. § 38-764 (I))

Arizona law allows a member to retire, receive a pension and continue working without first terminating employment if *all* the following conditions are met:

- a) Member must have reached normal retirement on or before the date of retirement.
- b) Member's work hours must be reduced below 20/20 after retirement. If the member has already worked one or more weeks of 20 or more hours in the fiscal year before retirement, those weeks will count toward the 20/20 criteria.
- c) Member's employer must agree to the reduced work hours.

Scenario 1: *A 52-year-old member with 28 years of service decreases his hours with his ASRS employer to 15 per week and retires without terminating employment. Twelve months after his retirement his ASRS employer offers him a 25 hour per week position. The member cannot accept the position without having his pension suspended because he has not been terminated from employment for 12 months.*

Scenario 2: *A member with 80 points (normal retirement for them) decreases his hours to 19 per week and retires from the ASRS without terminating employment. The member works 19 hours per week for two years then terminates his position. Fifteen months after terminating employment the member is offered a full-time position with an ASRS employer. The member can accept this position without a pension suspension since he is at least 12 months beyond his termination of employment, assuming the other requirements of A.R.S. § 38-766.01 are met.*

Common Missteps and Pitfalls

The following are common pitfalls the ASRS has identified that have led to revocations of benefits and penalties to retirees and employers.

- **Returning to work before reaching normal retirement.** Many early retirees aren't aware that they cannot work in excess of 20/20 until they reach normal retirement, which could be as much as 15 years after early retirement.
- **Not waiting the full 12 months before returning to work.** A retiree cannot return to 20/20 employment just because they have less than 20 weeks before reaching their 12 month anniversary. The exemption from returning to active contributory status is at the 12 month anniversary, not any date before.
- **Not strictly limiting the weeks of working 20 or more hours to less than 20.** Many retirees think they are working 20 or more hours only occasionally, and are very surprised when they discover that they exceeded the 19 week limit.
- **Not submitting a written acknowledgment.** One of the statutory requirements is a written acknowledgment, within 30 days, of the conditions under which a retiree is returning to work.
- **Relying on others' understanding rather than contacting ASRS directly.** The ASRS puts a great deal of effort into understanding and following state statutes and rules. Please review all the information on the ASRS website for a more detailed explanation. If you still have questions, contact us.

Alternate Contribution Rate

Legislation passed in the 50th Legislature-First Regular Session under Senate Bill 1609 authorizes the ASRS to implement an Alternate Contribution Rate for retirees who return to work. The rate will be charged to and paid by the employer, not the retiree.

The purpose of the legislation is to mitigate the potential actuarial impact that retired members who return to work might have on the Trust Fund.

The Alternate Contribution Rate will be effective July 1, 2012. Please see the Alternate Contribution Rate fact sheet for additional details.